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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) CASE NO. CR 14-0306 WHA
15 Plaintiff,) CR 08-0222 WHA
16 v.) MOTION TO STAY ORDER RE CONDITIONS OF
17 LUKE D. BRUGNARA,) RELEASE DATED SEPTEMBER 10, 2014
18 Defendant.)
19 _____)

20 Based in part upon information received in the last three hours regarding allegedly unauthorized
21 phone calls made by defendant from the halfway house, the United States moves this Court to stay its
22 Order Re Conditions of Release Dated September 10, 2014. In support of this motion, the United States
23 offers the following:

24 First, by way of background, the United States wants to reiterate why it believes strict conditions
25 of release are paramount in this case. The United States is not seeking to trick defendant or to set up
26 hypertechnical constraints just so defendant cannot abide by them. The United States, along with
27 multiple magistrates and this Court, believes that defendant represents a severe risk of danger to the
28 community, particularly a severe risk of economic danger. To be more specific, the United States

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1 believes defendant will use whatever freedom he is provided to defraud others into providing him
 2 money, whether by pursuing some real estate or other deal using fake art, or, even more specifically, by
 3 fencing a stolen Degas statue. Not only would such conduct create more victims, but this money, in
 4 turn, could be used for any number of purposes, forcing the government to trace the transactions and to
 5 seek forfeiture from potentially unwitting recipients of such funds. In short, that there are unaccounted
 6 for assets at issue in this case is quite important in considering strict conditions of release.¹

7 In the two most recent hearings regarding these conditions, defendant at best misled Magistrate
 8 Cousins and this Court. On September 3 (before Magistrate Cousins) and on September 9 (before this
 9 Court), defendant made at least misleading allegations about the circumstances at the halfway house to
 10 which he previously requested to be released. Based on those allegations, both Magistrate Cousins and
 11 this Court provided more leeway to defendant. Magistrate Cousins amended the release terms to allow
 12 defendant to meet with his counsel of record, Erik Babcock, not only in the halfway house, but also in
 13 the federal building. Based on government counsels' recollection, those allegations included that the
 14 halfway house conference room was too small, that the halfway house had a policy that the door to the
 15 conference room must remain open even when attorneys are meeting with clients, that people could and
 16 did remain just outside that door (i.e., at least implying they would overhear privileged
 17 communications), and more. Over the government's objections, Magistrate Cousins allowed defendant
 18 to come to the federal building to meet with Attorney Babcock.

19 On September 9, again with no notice to the United States, the defense again complained about
 20 the conditions at the halfway house to which they sought and attained release and asked for more
 21 leeway. This time the defense complained that defendant had been forced to wait "three hours" to call
 22 his lawyer, that the halfway house "counted" calls from defendant to his attorney that did not result in a
 23 conversation (i.e., voicemail) and would limit defendant to two calls whether they were connected or
 24 not, and that defendant needed to call other lawyers – not just Attorney Babcock – in an effort to retain
 25 private counsel. Pretrial Services was not present at this hearing, and the Court told counsel for the
 26

27 ¹ Exacerbating such concerns is that defendant, who has millions of dollars in debt and who has
 28 repeatedly claimed he has no money or assets to repay any of it or afford counsel, now claims to be able
 to hire probably one of the most expensive defense attorneys in the world.

1 United States to follow up on these issues.

2 Immediately after that September 9 hearing, the United States followed up on the issues raised in
 3 it. That very morning, multiple representatives of the United States Attorney's Office, including
 4 undersigned counsel, walked to the halfway house along with an FBI agent. We met with GeoCare's
 5 Western Region Area Manager, who we understand oversees all of the halfway houses in that region.
 6 We met in the conference room at issue. It measures approximately 17 feet by 10 feet. We were
 7 informed that contrary to defendant's representations, the halfway house does not have a policy that the
 8 door cannot be closed during attorney-client meetings; there may be an issue with latching the door
 9 because it locks, but the door can be closed at least to the point of touching the door jam, such that no
 10 one could see or hear through it. We also were informed that defendant did not have to wait "three
 11 hours," or anywhere near that amount of time, to call his attorney. To the contrary, he was trying to
 12 schedule a medical appointment during this time, which he was permitted to do. In this period, there
 13 were communications involving defendant, the halfway house, Pretrial Services, and the medical
 14 provider's office. Defendant was allowed to leave for a medical appointment, and he was out of the
 15 halfway house for more than two hours allegedly obtaining medical treatment.² We also were informed
 16 that contrary to defendant's assertions, the halfway house does not count "attempts" to call an attorney
 17 (i.e., voicemail) as calls with an attorney; in other words, only conversations count. We also were
 18 informed that contrary to defendant's assertions, the halfway house does not make him provide two
 19 hours' notice before he can call an attorney; even though that was the order and the halfway house could
 20 enforce it, the halfway house does not enforce it. We were informed that defendant asks to use the
 21 phone "about every 15 minutes;" although that was an exaggeration, the point was made.

22 **Perhaps most importantly, we discovered information that defendant has violated the**
 23 **terms of his release by calling his wife, despite repeatedly being told by this Court, Magistrate**
 24 **Cousins, and Pretrial Services that this would be a plain violation of court orders.**

25 Later that afternoon and while the government was finalizing its response to defendant's motion
 26 to recuse the United States Attorney's Office, the Court issued its Order Re Conditions of Pretrial

28 ² Defendant was supposed to provide a doctor's note. He did not. As of this morning, despite
 requests from the halfway house and Pretrial Services, he still had not provided one.

1 Release. That order appears to have been based, at least in part, on allegations that now have been
 2 exposed as unsubstantiated at best.

3 In addition, just late this morning the United States was informed of more unauthorized calls by
 4 defendant. **Specifically, we were informed that defendant called at least two numbers that are not**
5 attorneys; one of the numbers belongs to his wife, who also is the surety securing defendant's
6 release from pretrial custody.

7 The United States was informed that the halfway house was preparing "an incident report"
 8 outlining what halfway house personnel deemed "unauthorized phone calls." The United States was
 9 informed that the incident report would be submitted to Pretrial Services within two hours, which would
 10 be approximately 2:00 p.m. today.

11 Based on this developing information, the United States respectfully moves as follows: (1) that
 12 this Court STAY its Order Re Conditions of Pretrial Release dated September 10, 2014; in light of both
 13 the misleading information that defendant proffered that appears to have contributed to that Order, and
 14 in light of the allegations of repeated violations of one of the key restrictions this Court (and Magistrate
 15 Cousins) imposed upon defendant, defendant should not be allowed to have a cell phone, at least until
 16 the Court can review the forthcoming incident report and the parties can address it; and (2) that Pretrial
 17 Services shall forward the "incident report" to the Court and the parties immediately upon receiving it.
 18 If the facts turn out to be as alleged, the United States will move for defendant's immediate remand.

19 In the alternative, the United States respectfully requests that the Court amend the Order as
 20 follows: (1) Pretrial Services shall obtain a phone for defendant [the United States is concerned that
 21 defendant could read the existing Order to allow him to leave the halfway house to obtain the phone];
 22 (2) to the extent possible, that phone shall not have the capability of sending or receiving text messages
 23 or email; and (3) the word "should" on page 2, line 4, be modified to "shall."

24 In light of this Court's Notice of Unavailability for today and tomorrow, the United States will
 25 alert both the duty district court judge and Magistrate Cousins of this filing and will hand-deliver copies
 26 to those chambers.

27 DATED: September 11, 2014

/s/
 W, DOUGLAS SPRAGUE
 BENJAMIN KINGSLEY
 Assistant United States Attorneys

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